

filed in connection with these amendments.

DATE: Comments must be received on or before March 1, 1986.

ADDRESS: Address comments to: Dockets Branch, Office of Hazardous Materials Transportation (DHM-53), U.S. Department of Transportation, Washington, D.C. 20590. Comments should be submitted, when possible, in five copies. The Dockets Branch is located in room 8426 of the Nassif Building, 400 Seventh Street, SW., Washington, DC. Office hours are 8:30 A.M. to 5:00 P.M., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Edward A. Altemos, International Standards Coordinator, Office of Hazardous Materials Transportation, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 426-0656.

SUPPLEMENTARY INFORMATION: On October 11, 1985, the RSPA published a final rule in the Federal Register under Docket No. HM-188B (50 FR 41516) which permitted, with certain conditions and limitations, the transport of hazardous materials between Canada and the United States in conformance with the TDG Regulations recently published by Transport Canada. The amendments to the HMR published in that final rule imposed no requirements on persons offering or transporting hazardous materials and were intended only to grant relief to such persons and to facilitate the transport of hazardous materials between Canada and the United States by allowing, under certain conditions, hazardous materials to be transported within the United States in conformance with the TDG Regulations.

On November 12, 1985, the RSPA received a petition for reconsideration of this final rule filed in accordance with the provisions of 49 CFR 106.35. The petitioner, Air Products and Chemicals, Inc. (APCI), contends that the RSPA's failure to fully recognize the TDG regulations for certain hazardous materials moving within the United States enroute to Canada constitutes an unnecessary burden on United States shippers and requested that the final rule be modified to grant "full reciprocity" to the TDG Regulations by permitting compliance with the TDG Regulations in lieu of the provisions of the HMR for the shipment to Canada of hazardous materials classed in Divisions 2.3 and 2.4 (i.e. poison and corrosive gases, respectively) of the TDG Regulations.

Although the RSPA questions how a rulemaking that imposes no requirements can be considered to

create an unnecessary burden as stated by the petitioner, in accordance with the procedures regarding proceedings on petitions for reconsideration the RSPA has determined to act upon this petition by permitting the public the opportunity to submit comments on the merits of this petition. This course of action has been selected because the modifications sought by the petitioner would allow conformance to the TDG Regulations considerably in excess of that proposed in the notice of proposed rulemaking.

Although the RSPA is not in full agreement with certain of the factual statements in the petition, in order to afford potential commenters the opportunity to consider the merits of the APCI petition, the substantive paragraphs are quoted in the following:

Under the provisions of 49 CFR 106.35, Air Products and Chemicals, Inc. (APCI), wishes to petition for reconsideration of a final rule which appeared in the Federal Register of 11 October 1985 under the above referenced docket number. The final rule is very burdensome on U.S. shippers of poison gases (2.3) and corrosive gases (2.4) to Canada.

Paragraph 171.12a(a) allows shipments of hazardous materials (dangerous goods) which originate in Canada to be classed, packaged, marked, labeled, placarded, and described on a shipping paper in accordance with TDG Regulations with certain additional requirements. The TDG Regulations allow shipments to enter Canada if in accordance with 49 CFR for all hazard classes with the exception of hazard classes 2.3 (poison gases) and 2.4 (corrosive gases). Paragraph 171.12a(c) of the final rule allows U.S. shippers to use Canadian Poison Gas and Corrosive Gas labels and placards for shipments enroute to Canada. The final rule does not allow the U.S. shipper to use Canadian package markings and shipping paper descriptions for gases in 2.3 and 2.4 classifications. This failure to authorize Canadian markings and documentation creates an unnecessary burden on U.S. shippers to Canada and creates the possibility of conflicting information on package markings and shipping papers.

Two examples will illustrate this point:

1. Some compressed gas mixtures are most appropriately shipped to Canada under proper shipping name "Compressed gases, toxic, n.o.s." (UN 1955) which is listed in both the TDG regulations and IMD regulations (M1.102) (sic) but which is not listed in 172.101. In the U.S. the proper shipping name is "Compressed gas, n.o.s., nonflammable gas" (UN 1956). Under the final rule, the U.S. shipper must comply with both 49 CFR and TDG for marking and shipping papers. This requires dual marking on packages and dual descriptions on shipping papers. The markings do not agree and even worse, two different UN identification numbers are displayed on the package. Likewise, shipping papers will contain conflicting information.

2. A compressed gas such as Silane also illustrates this problem. Under 49 CFR, silane is shipped as "Compressed gas, n.o.s.,

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket No. HM-188B, Notice No. 85-5]

Transportation of Hazardous Materials Between the United States and Canada

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Request for comments on petition for reconsideration.

SUMMARY: The Research and Special Programs Administration (RSPA) recently published amendments to the Department of Transportation's Hazardous Materials Regulations (HMR) in order to permit transportation of hazardous materials between the United States and Canada, with certain conditions and limitations, in accordance with the recently published Canadian Transport of Dangerous Goods Regulations (TDG Regulations). This notice requests public comment regarding a petition for reconsideration

flammable gas, UN 1954" because silane is not listed by name in Table 172.101. However, TDG lists Silane by name, classifies it as 2.3 (Poison Gas) and shows UN identification number 2203. Again, for shipments to Canada, package markings and shipping papers will show two proper shipping names and two conflicting identification numbers.

APCI believes that 171.12a(c), as currently written, is unnecessarily restrictive and, as illustrated above, creates confusion. We wish to petition for an amendment to this paragraph which would allow TDG classification, packaging, marking, and documentation for gases in the 2.3 and 2.4 classifications. We believe this amendment to be justified for the following reasons:

1. Shipments from Canada to the U.S.A. are given complete reciprocity. We see no reason why complete reciprocity cannot be given to shipments from the U.S.A. to Canada.

2. As has been mentioned on numerous occasions, the UN identification number is the key to the identification of hazardous materials and the key to the appropriate response in the event of an accident, spill or leak.

3. Conflicting shipping names on packages and documents will undoubtedly raise questions with regulatory authorities and cause delays while explanations are sought. In the event of an accident or incident, conflicting information may be a detriment to safety. Use of one shipping name with the appropriate identification number would solve these potential problems.

In view of the foregoing, APCI believes that paragraph 171.12a(c) must be amended to authorize use of TDG regulations for shipments of 2.3 and 2.4 gases from the United States to Canada.

Comments are invited regarding the desirability of amending § 171.12a(c) as requested by APCI. Information is also requested regarding the overall magnitude of the problems described by APCI and the seriousness of the "burdens" the present regulations impose.

(49, U.S.C. 1803, 1804, 1808; 49 CFR 1.53, unless otherwise noted)

Issued in Washington, DC, on December 20, 1985

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

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